

# **EXHIBIT 1**

**From:** Chang, Esther Kim [mailto:echang@mofo.com]  
**Sent:** Monday, September 11, 2017 5:25 PM  
**To:** Andrea P Roberts <andreaproberts@quinnemanuel.com>; QE-Waymo <qewaymo@quinnemanuel.com>; Otto Trucking at Goodwin (DG-GPOttoTruckingWaymo@goodwinlaw.com) <DG-GPOttoTruckingWaymo@goodwinlaw.com>; John Cooper (JCooper@fbm.com) <JCooper@fbm.com>; Matthew Cate (MCate@fbm.com) <MCate@fbm.com>  
**Cc:** UberWaymoMoFoAttorneys <UberWaymoMoFoAttorneys@mofo.com>; Boies Service (BSF\_EXTERNAL\_UberWaymoLit@bsflp.com) <BSF\_EXTERNAL\_UberWaymoLit@bsflp.com>; Uber-sg@LISTS.SUSMANGODFREY.COM  
**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

Andrea,

Thank you for the response. We agree to a 6 pm Pacific deadline on 9/20 for exchanging objections to trial witness and trial exhibit lists.

The deadlines in your list conform to our understanding of the deadlines.

Your proposed allocations for trial exhibit numbers work for us.

Additionally, we would like to raise the following issues. Please let us know if Waymo agrees.

- We propose a limit of 12 pages for Daubert briefs (both opening and responsive briefs).
- In addition to the PDF version, each party will serve a native Excel version of its trial exhibit list.
- PDF copies of documents on the trial exhibit list will be served by Friday 9/15.
- Parties will agree to a de-duped trial exhibit list by Monday 9/18. We can circulate a proposed de-duped list in redline the morning of Monday 9/18.

Esther  
Tel: (415) 268-7562

**From:** Andrea P Roberts [mailto:[andreaproberts@quinnemanuel.com](mailto:andreaproberts@quinnemanuel.com)]  
**Sent:** Monday, September 11, 2017 1:45 PM  
**To:** Chang, Esther Kim; QE-Waymo; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)); John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)); Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com))  
**Cc:** UberWaymoMoFoAttorneys; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)); [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)  
**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

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Esther,

We agree to the proposed schedule, with one exception. Uber proposed that objections to trial witness lists and trial exhibit lists be exchanged at noon PT on September 20. We propose that deadline be 6 pm PT.

Assuming Defendants agree, below is our understanding of the agreed upon deadlines:

- Wednesday 9/13:** Serve responses to motions in limine (3 pm Pacific)
- **Wednesday 9/13:** File complete packet for motions in limine (midnight Pacific)
- **Thursday 9/14:** Reply expert reports
- Friday 9/15:** Serve trial witness lists and trial exhibit lists
- Saturday 9/16:** File opening Daubert briefs
- Wednesday 9/20:** Objections to trial witness lists and trial exhibit lists (6 pm Pacific)
- Friday 9/22:** File responsive Daubert briefs
- W **Wednesday 9/27:** Pretrial conference

Please let me know if there is disagreement on any of these dates. Additionally, Otto Trucking has not engaged in these discussions. We assume that they agree to the dates that Waymo and Uber have been discussing.

Additionally, the parties need to agree upon number ranges for trial exhibits. Consistent with the approach for deposition exhibits, we propose that Waymo's trial exhibits be numbered 1-999 and 3,000-up, and Defendants' trial exhibits be numbered 1,000-2,999. Please let us know if there are issues with this approach.

Thanks,  
Andrea

**From:** Chang, Esther Kim [<mailto:echang@mofo.com>]  
**Sent:** Monday, September 11, 2017 10:56 AM  
**To:** Andrea P Roberts <[andreaproberts@quinnemanuel.com](mailto:andreaproberts@quinnemanuel.com)>; QE-Waymo <[gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)>; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)) <[DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)>; John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)) <[JCooper@fbm.com](mailto:JCooper@fbm.com)>; Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com)) <[MCate@fbm.com](mailto:MCate@fbm.com)>  
**Cc:** UberWaymoMoFoAttorneys <[UberWaymoMoFoAttorneys@mofo.com](mailto:UberWaymoMoFoAttorneys@mofo.com)>; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)) <[BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)>; [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)  
**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

Andrea,

I write to follow up on the email below. We would like to finalize the Daubert briefing schedule today, as the deadlines would fall this week. Is there a time today that would work for a call to discuss?

Esther  
Tel: (415) 268-7562

**From:** Chang, Esther Kim  
**Sent:** Thursday, September 07, 2017 12:18 PM  
**To:** Andrea P Roberts; QE-Waymo; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)); John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)); Matthew Cate

([MCate@fbm.com](mailto:MCate@fbm.com))

**Cc:** UberWaymoMoFoAttorneys; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsfllp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfllp.com)); [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)

**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

Andrea,

We continue to believe that there should be one Daubert deadline for all experts, and that the parties should have the benefit of reply expert reports before having to file a Daubert. Waymo's proposed bifurcated briefing schedule, which would require the parties to have to file two Daubert briefs for the same expert within a matter of days, seems inefficient and impractical.

In the spirit of compromise, we would agree to a September 16 deadline for all Daubert motions, with responses due September 22. That would give the parties six days to respond to Dauberts. We are available today to further discuss, as we do not believe that this should have to go to Judge Alsup.

Esther

Tel: (415) 268-7562

**From:** Andrea P Roberts [<mailto:andreaproberts@quinnemanuel.com>]

**Sent:** Thursday, September 07, 2017 11:47 AM

**To:** Chang, Esther Kim; QE-Waymo; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)); John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)); Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com))

**Cc:** UberWaymoMoFoAttorneys; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsfllp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfllp.com)); [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)

**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

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Esther,

We agree on the number and page limits for MILs. Additionally, with respect to numbering MILs, we propose that any renewed MILs be given the same number that they previously were given, and any new MILs be given numbers that were not previously used.

For witness lists and exhibit lists, we agree to serving them on September 15, with objections due on September 20 at 9 pm so that they can be incorporated into the Joint Pretrial Order due that day.

With respect to the Daubert deadline, we don't agree to Defendants' proposed schedule. Defendants are proposing that they have until September 18 to file Dauberts against our experts who served opening reports on August 24, and then we get only four days to oppose. Four days is not enough time. Moreover, the parties will need to be scheduling depositions in that time frame, making four days even more problematic. If Defendants will not agree to our last proposal, set forth again below, we are prepared to raise this issue with Judge Alsup to get a ruling. We will agree to Defendants' proposal that Daubert responsive briefs be due on September 22.

Dauberts to be filed against an expert who submitted an opening or rebuttal report – due September 14

Dauberts to be filed against an expert who submits only a reply report – due September 18

If an expert submits a reply report, but also submitted an opening or rebuttal report – supplemental brief due September 18

Responsive briefs – due September 22

Thanks,  
Andrea

**From:** Chang, Esther Kim [<mailto:echang@mofo.com>]

**Sent:** Wednesday, September 06, 2017 4:11 PM

**To:** Andrea P Roberts <[andreaproberts@quinnemanuel.com](mailto:andreaproberts@quinnemanuel.com)>; QE-Waymo <[gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)>; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)) <[DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)>; John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)) <[JCooper@fbm.com](mailto:JCooper@fbm.com)>; Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com)) <[MCate@fbm.com](mailto:MCate@fbm.com)>

**Cc:** UberWaymoMoFoAttorneys <[UberWaymoMoFoAttorneys@mofo.com](mailto:UberWaymoMoFoAttorneys@mofo.com)>; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)) <[BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)>; [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)

**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

Andrea,

We propose September 22 for responses to Dauberts.

Esther  
Tel: (415) 268-7562

**From:** Andrea P Roberts [<mailto:andreaproberts@quinnemanuel.com>]

**Sent:** Wednesday, September 06, 2017 4:09 PM

**To:** Chang, Esther Kim; QE-Waymo; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)); John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)); Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com))

**Cc:** UberWaymoMoFoAttorneys; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)); [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)

**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

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Esther,

Regarding Dauberts, what date do you propose for responses to Daubert briefs if you propose that the opening briefs be filed on September 18?

Thanks,  
Andrea

**From:** Chang, Esther Kim [<mailto:echang@mofo.com>]  
**Sent:** Wednesday, September 06, 2017 3:49 PM  
**To:** Andrea P Roberts <[andreaproberts@quinnemanuel.com](mailto:andreaproberts@quinnemanuel.com)>; QE-Waymo <[gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)>; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)) <[DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)>; John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)) <[JCooper@fbm.com](mailto:JCooper@fbm.com)>; Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com)) <[MCate@fbm.com](mailto:MCate@fbm.com)>  
**Cc:** UberWaymoMoFoAttorneys <[UberWaymoMoFoAttorneys@mofo.com](mailto:UberWaymoMoFoAttorneys@mofo.com)>; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsfllp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfllp.com)) <[BSF\\_EXTERNAL\\_UberWaymoLit@bsfllp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfllp.com)>; [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)  
**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

Andrea,

#### **Number of MILs**

We confirm that Uber and Otto Trucking together get six MILs. Regarding your other points, we provide the below confirmations and clarifications:

- If an MIL was tentatively denied and the moving party renews that MIL, that MIL would need to be briefed and would count against the six.
- If an MIL was tentatively granted, the moving party does not have to renew the MIL and that MIL would not count against the six.
- As to our statement that the parties abide by Judge Alsup's tentative rulings, we were suggesting only that the parties treat the tentative rulings as final rulings, subject to:
  - The above agreement regarding renewing MILs tentatively denied and
  - The parties' continued right, based on the evidence presented at trial, to request that the Court revisit an MIL ruling decided in advance of trial. *See United States v. Ramsey*, No. CR 09-398 SBA, 2010 WL 536249, at \*1 n.3 (N.D. Cal. Feb. 5, 2010) ("The Court's pretrial rulings on the instant motions may be revisited during trial upon request in the event there is a factual and legal basis for doing so."). In other words, the parties would not be waiving its rights.

Please confirm that we are agreed.

#### **Page limit of MILs**

Pursuant to the Court's statements at the June 29 hearing, please confirm that the MILs and responses to MILs will each have a page limit of four pages.

"Each side's going to get about six motions in limine, at most, that are going to be about four pages long. That's the way trials work." (6/29/17 Hr'g Tr. at 64:22-24.)

#### **Other Deadlines**

We agree that witness lists and exhibit lists will not be served this week. We propose that these be served on September 15.

We believe the parties should have one Daubert deadline and that the deadline should be after all expert reports have been submitted. We propose September 18.

Esther  
Tel: (415) 268-7562

**From:** Andrea P Roberts [<mailto:andreaproberts@quinnemanuel.com>]  
**Sent:** Wednesday, September 06, 2017 2:19 PM  
**To:** Chang, Esther Kim; QE-Waymo; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)); John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)); Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com))  
**Cc:** UberWaymoMoFoAttorneys; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsfllp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfllp.com)); [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)  
**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

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Esther,

I'm following up on my email below. Please let us know Defendants' response.

Thanks,  
Andrea

**From:** Andrea P Roberts  
**Sent:** Tuesday, September 05, 2017 5:38 PM  
**To:** Chang, Esther Kim <[echang@mofo.com](mailto:echang@mofo.com)>; QE-Waymo <[qewaymo@quinnemanuel.com](mailto:qewaymo@quinnemanuel.com)>; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)) <[DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)>; John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)) <[JCooper@fbm.com](mailto:JCooper@fbm.com)>; Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com)) <[MCate@fbm.com](mailto:MCate@fbm.com)>  
**Cc:** UberWaymoMoFoAttorneys <[UberWaymoMoFoAttorneys@mofo.com](mailto:UberWaymoMoFoAttorneys@mofo.com)>; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsfllp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfllp.com)) <[BSF\\_EXTERNAL\\_UberWaymoLit@bsfllp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfllp.com)>; [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)  
**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

Esther,

Regarding the number of MILs, I want to clarify a couple of things. First of all, at the June 29 hearing, Judge Alsup very clearly said that the limit is six MILs per side. Thus, Uber and Otto Trucking are limited to six MILs in total. I think we're in agreement on that point because your emails have also noted that the limit is six MILs per side, but we want to confirm we're on the same page and that Otto Trucking is as well.

Additionally, your email below says "both parties will abide by tentative rulings and those MILs will not count against the six . . ." To confirm we are on the same page, if a MIL was tentatively

denied and the moving party renews that MIL, it will count against the six. If the MIL was tentatively denied and the moving party does not renew that MIL, it does not count against the six. If the MIL was tentatively granted, the moving party does not need to renew that MIL. Are we on the same page on this? Also, can you explain what you mean by “both parties will abide by tentative rulings”? Are you suggesting that both parties will need to agree that the tentative rulings cannot later be challenged or addressed based on subsequent facts that may be relevant to the Court’s tentative rulings or later challenge for example on appeal?

For Daubert briefing, our proposal is that any Dauberts to be filed against an expert who submitted an opening or rebuttal report should be filed by September 14. If a Daubert is to be filed against an expert who submits only a reply report, the opening brief should be due on September 18. If an expert submits a reply report, but also submitted an opening or rebuttal report, the moving party can file a supplemental Daubert brief by September 18. We agree to having all responsive briefs due by September 21. We don’t think that there is a need for the parties to identify which experts will be submitting reply reports in advance under this schedule.

Lastly, your email below does not address the deadline for serving witness lists and exhibit lists. To confirm, we are all in agreement that they are not due this week, and are negotiating when they will be due vis-à-vis the deadline for reply reports.

Thanks,  
Andrea

**From:** Chang, Esther Kim [<mailto:echang@mofo.com>]  
**Sent:** Tuesday, September 05, 2017 5:59 AM  
**To:** Andrea P Roberts <[andreaproberts@quinnemanuel.com](mailto:andreaproberts@quinnemanuel.com)>; QE-Waymo <[gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)>; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)) <[DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)>; John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)) <[JCooper@fbm.com](mailto:JCooper@fbm.com)>; Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com)) <[MCate@fbm.com](mailto:MCate@fbm.com)>  
**Cc:** UberWaymoMoFoAttorneys <[UberWaymoMoFoAttorneys@mofo.com](mailto:UberWaymoMoFoAttorneys@mofo.com)>; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)) <[BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)>; [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)  
**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

Andrea,

Having reviewed the order at Dkt. 874, we agree to your interpretation, indicated in the last paragraph of your September 4 email at 9:12 pm. Both parties will abide by tentative rulings and those MILs will not count against the six, unless a party chooses to make a renewed MIL on a tentatively decided MIL.

Esther  
Tel: (415) 268-7562

**From:** Andrea P Roberts [<mailto:andreaproberts@quinnemanuel.com>]  
**Sent:** Monday, September 04, 2017 9:28 PM  
**To:** Chang, Esther Kim; QE-Waymo; Otto Trucking at Goodwin ([7](mailto:DG-</a></p></div><div data-bbox=)



[GPottoTruckingWaymo@goodwinlaw.com](mailto:GPottoTruckingWaymo@goodwinlaw.com)); John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)); Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com))

**Cc:** UberWaymoMoFoAttorneys; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsfllp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfllp.com)); [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)

**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

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Esther,

On the last point regarding MILs that were tentatively granted, we are relying on Dkt. 874, which issued after the June 29 hearing. The quoted language in my email below comes from that order.

Thanks,  
Andrea

**From:** Chang, Esther Kim [<mailto:echang@mofo.com>]

**Sent:** Monday, September 04, 2017 9:22 PM

**To:** Andrea P Roberts <[andreaproberts@quinnemanuel.com](mailto:andreaproberts@quinnemanuel.com)>; QE-Waymo <[gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)>; Otto Trucking at Goodwin ([DG-GPottoTruckingWaymo@goodwinlaw.com](mailto:DG-GPottoTruckingWaymo@goodwinlaw.com)) <[DG-GPottoTruckingWaymo@goodwinlaw.com](mailto:DG-GPottoTruckingWaymo@goodwinlaw.com)>; John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)) <[JCooper@fbm.com](mailto:JCooper@fbm.com)>; Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com)) <[MCate@fbm.com](mailto:MCate@fbm.com)>

**Cc:** UberWaymoMoFoAttorneys <[UberWaymoMoFoAttorneys@mofo.com](mailto:UberWaymoMoFoAttorneys@mofo.com)>; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsfllp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfllp.com)) <[BSF\\_EXTERNAL\\_UberWaymoLit@bsfllp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfllp.com)>; [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)

**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

Andrea,

We confirm your list of agreed-upon list of dates.

It seems that you are agreeable to a September 18 deadline for experts that will be submitting a reply expert report. How will we know which experts will be submitting a reply expert report? Are you contemplating that the parties would represent very shortly after responsive expert reports on 9/7 whether a reply report would be filed? Also, two days to respond to Dauberts does not seem to be enough time for Dauberts that get filed on 9/18.

We disagree with your reading of Judge Alsup's statements at the June 29 hearing. Judge Alsup provided a **tentative** ruling, and the parties did not brief the issue. MILs that were tentatively granted would need to be renewed (so that the parties can brief the issue) and would count against the six motion limit imposed by Judge Alsup.

Esther  
Tel: (415) 268-7562

**From:** Andrea P Roberts [<mailto:andreaproberts@quinnemanuel.com>]

**Sent:** Monday, September 04, 2017 9:12 PM

**To:** Chang, Esther Kim; QE-Waymo; Otto Trucking at Goodwin ([DG-](mailto:DG-)

[GPottoTruckingWaymo@goodwinlaw.com](mailto:GPottoTruckingWaymo@goodwinlaw.com)); John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)); Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com))

**Cc:** UberWaymoMoFoAttorneys; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsfilp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsfilp.com)); [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)

**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

- External Email -

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Esther,

We are in agreement on the following dates:

- Thursday 9/7:** Responsive expert reports
- **Thursday 9/7:** Serve motions in limine
- **Wednesday 9/13:** Serve responses to motions in limine (3 pm Pacific)
- **Wednesday 9/13:** File complete packet for motions in limine (midnight Pacific)
- **Thursday 9/14:** Reply expert reports
- Wednesday 9/20:** Objections to trial witness lists and trial exhibit lists (noon Pacific)
- W **Wednesday 9/27:** Pretrial conference

We have concerns about Uber's proposed dates for the initial exchange of witness lists and exhibit lists, and for Daubert briefing. With respect to witness and exhibit lists, Uber's proposal only allows for 5 days to prepare objections, whereas Waymo's proposal gives the parties 6 days for objections. We would prefer that extra day. Even 6 days is a short period of time. While this means that exhibit lists will be due on the same day as reply reports, the parties should know which documents their experts will rely upon in reply reports by that day. Alternatively, we would be willing to discuss supplementing exhibit lists after 9/14 solely for the purpose of adding documents relied upon in reply reports.

For Daubert motions, Uber's proposal only allows for 3 days to oppose Dauberts. Waymo's proposal gave 6 days to oppose Dauberts. 3 days is not enough time, particularly since the parties will also be busy with expert deposition in the same time period, and because each side has had the other side's opening expert reports since August 24. Therefore, we propose:

Daubert motions for experts who submitted opening or rebuttal reports – 9/14

Daubert motions for experts who submitted reply reports, or supplemental briefs for experts who submitted opening or rebuttal reports and then also submitted a reply report – 9/18

Responses to Daubert motions – 9/20

Lastly, with respect to the limit on the number of MILs, we agree that it should be 6 per side, including any renewed MILs that were included in the parties' lists of potential early MILs that were not previously briefed and that Judge Alsup tentatively denied. The 6 MIL total should not include those MILs that Judge Alsup tentatively granted. In that regard, for those Waymo MILs that he tentatively granted, Judge Alsup stated that they were "granted without prejudice to Defendants making a contrary showing to admit specific items of evidence at trial." Thus, Waymo does not need to renew those MILs and have them count against the overall count of 6.

Thanks,  
Andrea

**From:** Chang, Esther Kim [<mailto:echang@mofo.com>]  
**Sent:** Saturday, September 02, 2017 12:22 PM  
**To:** QE-Waymo <[gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)>; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)) <[DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)>; John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)) <[JCooper@fbm.com](mailto:JCooper@fbm.com)>; Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com)) <[MCate@fbm.com](mailto:MCate@fbm.com)>  
**Cc:** UberWaymoMoFoAttorneys <[UberWaymoMoFoAttorneys@mofo.com](mailto:UberWaymoMoFoAttorneys@mofo.com)>; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)) <[BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)>; [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)  
**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

Andrea,

We think it makes sense to exchange exhibit lists, witness lists, and Daubert motions after reply expert reports. We accept your other modifications. Our counter-proposal is set forth below. We are available to meet and confer over the weekend.

- **Thursday 9/7:** Responsive expert reports
- **Thursday 9/7:** Serve motions in limine
- **Wednesday 9/13:** Serve responses to motions in limine (3 pm Pacific)
- **Wednesday 9/13:** File complete packet for motions in limine (midnight Pacific)
- **Thursday 9/14:** Reply expert reports
- **Friday 9/15:** Exchange trial witness lists and trial exhibit lists (including PDF copies of exhibits on exhibit list)
- *We think it makes sense to exchange these lists after reply expert reports, so that we have the full set of documents and persons relied upon.*
- **Monday 9/18:** Daubert motions
- *We think it makes sense to exchange Daubert motions after there has been opportunity to review reply expert reports.*
- **Wednesday 9/20:** Objections to trial witness lists and trial exhibit lists (noon Pacific)
- **Thursday 9/21:** Responses to Daubert motions
- **Wednesday 9/27:** Pretrial conference

Esther  
Tel: (415) 268-7562

**From:** Andrea P Roberts [<mailto:andreaproberts@quinnemanuel.com>]  
**Sent:** Friday, September 01, 2017 8:33 PM  
**To:** Chang, Esther Kim; QE-Waymo; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)); John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)); Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com))  
**Cc:** UberWaymoMoFoAttorneys; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)); [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)

[sg@LISTS.SUSMANGODFREY.COM](mailto:sg@LISTS.SUSMANGODFREY.COM)

**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

- External Email -

Esther,

With regards to the schedule, we propose the following:

Responsive expert reports – 9/7

Serve MILs – 9/7

Serve oppositions to MILs – 9/13 (will discuss an agreed upon time so that the moving party has time to file the packets)

File MIL packets – 9/13

Serve witness list – 9/14

Serve exhibit list, including PDF copies of exhibits on list – 9/14

Reply expert reports – 9/14

Daubert motions – 9/14

Exhibit list objections – 9/20 at noon

Witness list objections – 9/20 at noon

Responses to Daubert motions – 9/20

Please let us know if Defendants agree. We will respond separately regarding the number of MILs issue in your email.

Thanks,  
Andrea

**From:** Chang, Esther Kim [<mailto:echang@mofo.com>]

**Sent:** Friday, September 01, 2017 2:29 PM

**To:** QE-Waymo <[gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)>; Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)) <[DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)>; John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)) <[JCooper@fbm.com](mailto:JCooper@fbm.com)>; Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com)) <[MCate@fbm.com](mailto:MCate@fbm.com)>

**Cc:** UberWaymoMoFoAttorneys <[UberWaymoMoFoAttorneys@mofo.com](mailto:UberWaymoMoFoAttorneys@mofo.com)>; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)) <[BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)>; [Uber-  
sg@LISTS.SUSMANGODFREY.COM](mailto:sg@LISTS.SUSMANGODFREY.COM)

**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

Counsel,

We have not yet received a response to the proposal below. As some of these deadlines are fast approaching, we would like to resolve scheduling today. Please let us know your availability to discuss.

In addition, we have taken another look at the wording of Judge Alsup's statements at the June 29 hearing and believe he intended each side to get six new motions in limine, not including MILs that were decided in advance. Thus, motions in limine that were previously raised but which did not receive a final ruling would count as one of the six, if a party decided to renew that MIL.

Esther  
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**From:** Chang, Esther Kim  
**Sent:** Wednesday, August 30, 2017 1:00 PM  
**To:** QE-Waymo ([gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)) ([gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)); Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)); John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)); Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com))  
**Cc:** UberWaymoMoFoAttorneys; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)); [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)  
**Subject:** RE: Waymo v. Uber: Dauberts/MILs/trial lists

We have modified the proposed date for trial witness lists and trial exhibit lists and pushed it out an additional day, as reply expert reports will likely not be exchanged until close to midnight. Also, I've corrected the last sentence to reflect that MILs are served (rather than filed) initially. Changes are in red.

Esther  
Tel: (415) 268-7562

**From:** Chang, Esther Kim  
**Sent:** Wednesday, August 30, 2017 11:09 AM  
**To:** QE-Waymo ([gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)) ([gewaymo@quinnemanuel.com](mailto:gewaymo@quinnemanuel.com)); Otto Trucking at Goodwin ([DG-GPOttoTruckingWaymo@goodwinlaw.com](mailto:DG-GPOttoTruckingWaymo@goodwinlaw.com)); John Cooper ([JCooper@fbm.com](mailto:JCooper@fbm.com)); Matthew Cate ([MCate@fbm.com](mailto:MCate@fbm.com))  
**Cc:** UberWaymoMoFoAttorneys; Boies Service ([BSF\\_EXTERNAL\\_UberWaymoLit@bsflp.com](mailto:BSF_EXTERNAL_UberWaymoLit@bsflp.com)); [Uber-sg@LISTS.SUSMANGODFREY.COM](mailto:Uber-sg@LISTS.SUSMANGODFREY.COM)  
**Subject:** Waymo v. Uber: Dauberts/MILs/trial lists

*We would like to discuss on the 3 pm meet and confer.*

Counsel and John,

#### **SCHEDULING ISSUES**

Below is our proposal for Dauberts, motions in limine, trial witness lists, and trial exhibit lists.

**With respect to motions in limine**, we propose following the Court's guidance that it "need[s] at least two weeks" before the pretrial conference to review the briefing on Daubert motions and motions in limine. (6/7/17 H'rg Tr. at 57.)

**With respect to Daubert motions**, given the compressed schedule in this case and the expert report deadlines, it is not feasible to complete Daubert briefing two weeks in advance of the pretrial

conference. We have suggested dates for Daubert after reply expert reports but before the pretrial conference.

**With respect to trial witness lists and trial exhibit lists**, we have proposed postponing the exchange date to a date after reply expert reports, so that the parties have the benefit of having before them all documents relied on by the experts.

Highlighted dates are set dates. Non-highlighted are our proposed dates.

- **Thursday 9/7: Responsive expert reports**
- **Friday 9/8: Motions in limine**
- **Wednesday 9/13: Responses to motions in limine**
- **Thursday 9/14: Reply expert reports**
- **Friday 9/15: Exchange trial witness lists and trial exhibit lists**
- *After reply expert reports are received and we have full set of documents and persons relied upon.*
- **Monday 9/18: Daubert motions**
- **Monday 9/18: Objections to trial witness lists and trial exhibit lists**
- *Before joint proposed final pretrial order, which is due Wednesday 9/20*
- **Thursday 9/21: Responses to Daubert motions**
- **Wednesday 9/27: Pretrial conference**

#### **NUMBER OF MOTIONS IN LIMINE**

Finally, we wanted clarification on the number of motions in limine that each party is entitled to. Per the June 29 hearing, we understand that each side gets six new motions in limine, not including previously raised motions in limine. (See 6/29/17 Hr'g Tr. at 92:16-93:5.) Previously raised motions in limine would not count against the six. All motions in limine (the six new motions as well as previously raised motions) would be **served** at the same time. Please confirm that Waymo agrees.

**Esther Kim Chang**

Morrison & Foerster LLP

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